No. 155.

In the Supreme Court of the United States

OCTOBER TERM, 1926.

BEN E. HAYMAN, APPELLANT,

VS.

CITY OF GALVESTON, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANT.

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Grounds of Jurisdiction.

The appeal in this case is taken from the order entered by the district court on April 13, 1925, dismissing the bill of complaint for want of equity (R. 15). The appellant, in his bill of complaint filed in the district court set out that he is a physician and surgeon duly licensed as such under the laws of the State of Texas, and that the appellees are operating a public hospital in the city of Galveston, Texas; that the appellees, defendants below, have put into effect in said public hospital certain rules, regulations and practices which unjustly discriminate against this appellant and

certain other physicians and surgeons; that the said rules and practices deny to this appellant and his patients the use of the said public hospital and its facilities solely because he is engaged in the practice of osteopathic medicine and surgery, while granting the use of said hospital to other physicians and surgeons licensed under the same law as this appellant but who are engaged in practicing medicine and surgery along lines advocated by schools of medicine hostile to osteopathy; and that the action of the defendants violated the constitutional rights of this appellant, deprived him of his right to practice his profession without due process of law. The bill of complaint further alleges that the suit was one arising under the Constitution of the United States; that the matter in controversy exceeded the sum of three thousand dollars, and in conclusion prayed for an injunction restraining the defendants from continuing the alleged discriminatory rules and practices (R. 2-6).

The defendants answered by plea to the jurisdiction to the effect that the suit was against them as agents of the State of Texas and hence a suit against a state within the inhibition of the 11th amendment; and further, that the bill of complaint was insufficient in substance, in law or in equity, to entitle appellant to relief.

The district court did not sustain the plea to the jurisdiction, but considered the merits of the case, taking the allegations of the bill of complaint as admitted by the demurrer of the defendants, and dismissed the bill for want of equity (R. 15).

From the judgment of the district court the appeal was allowed direct to this court under the provisions of Section 238 of the Judicial Code, which, prior to the amendment of February 13, 1925, read as follows:

> "Appeals and writs of error may be taken from the district courts * * * direct to the supreme court in the following cases: * * *(3) in any case that involves the construction or application of the Constitution of the United States";

Section 14 of the Act of February 13, 1925, provides that the act shall take effect three months after its approval; but that it shall not affect cases then pending in the supreme court, nor shall it affect the right to a review, or the mode or time for exercising the same, as respects any judgment or decree entered prior to the date when it takes effect. The decree in the present case was entered on April 13, 1925, and hence the appeal is taken direct to this court.

The sole basis for invoking the jurisdiction of the Federal Court in this case was that the constitutional rights of the appellant were denied by the actions of the defendants as set forth in his bill of complaint. Under the doctrine reaffirmed in the case of *McMillian Contracting Co.* v. *Abernathy*, 263 U. S. 438, 68 L. Ed. 378, 44 Sup. Ct. 200, we think the appeal properly taken to this court. Quoting from Mr. Chief Justice Taft's opinion therein:

> "It suffices here to say that, under an unbroken line of authorities, when the plaintiff invokes the jurisdiction of the federal district court on the sole ground that this case is one in which a substantial Federal constitution or treaty question arises, this

court has exclusive appellate jurisdiction thereof under Sec. 238."

See also: *Union & Planters Bank* v. *Memphis*, 189 U. S. 71, 47 L. Ed. 712, 23 Sup. Ct. 604; *Carolina Glass Co.* v. *South Carolina*, 240 U. S. 305, 60 L. Ed. 658, 36 Sup. Ct. 293; *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50, 66 L. Ed. 458, 42 Sup. Ct. 244; *Colorado* v. *Toll*, 268 U. S. 228, 69 L. Ed. 927, 45 Sup. Ct. 505; *Wiley* v. *Sinkler*, 179 U. S. 58, 45 L. Ed. 84, 21 Sup. Ct. 17.

And the United States Circuit Courts of Appeals have uniformly dismissed for want of jurisdiction cases involving solely the construction or application of the Constitution of the United States when appealed to those courts from the trial courts. *Hamilton* v. *Brown*, 53 Fed. 753, 3 C. C. A. 639; *City of Macon* v. *Georgia Packing Company*, 60 Fed. 781, 9 C. C. A. 262; *Town of Westerly* v. *Waterworks*, 76 Fed. 467, 22 C. C. A. 278; *Illinois Central Ry. Co.* v. *Adams*, 93 Fed. 852, 35 C. C. A. 635; *Davis* v. *Burke*, 97 Fed. 501, 38 C. C. A. 299.

STATEMENT OF THE CASE.

Bill of Complaint.

The appellant, on the 14th day of Nov. 1924, filed his bill of complaint in the District Court of the United States for the Southern District of Texas, at Galveston, complaining of the City of Galveston, certain named defendants who were respectively the mayor and commissioners of the said city, and others who composed the board of managers of the John Sealy Hospital (R. 2).

The appellant is a resident of the said city and state, a graduate of the College of Osteopathic Physician and Surgeons of Los Angeles, California, and duly licensed as a physician and surgeon under the laws of the State of Texas, engaged in the practice of medicine and surgery in the City of Galveston (R. 2).

The John Sealy Hospital, located on property owned by the state, is leased to the City of Galveston for hospital purposes, and is the municipal hospital of the said city, maintained by public funds (R. 3). The defendants constituting the mayor and commissioners of Galveston control the finances of the institution, while those composing the John Sealy Hospital Board have charge of the operation and internal affairs of the hospital, including the making of rules and regulations.

The hospital has a charity ward for charity patients assigned thereto by the city health officer, and likewise maintains a large number of rooms and wards for pay patients, the revenue derived therefrom being paid into the general treasury of the city (R. 3). The lease under

which the premises are held provides that charity patients assigned to the hospital by the city health officer shall have the preference in being admitted, but that pay patients may be received under rules and regulations prescribed by the hospital board (R. 4).

The appellant alleges that the power to adopt rules and regulations is limited to the adoption of reasonable rules and regulations and that the public interest of the city and its tax payers requires that such rules and regulations shall not discriminate against patients seeking admission whether charity or pay, solely because the said patients desire to be treated by this appellant or by some other physician and surgeon who practices osteopathic medicine and surgery (R. 4).

The appellant alleges that the appellee, Edward Randall, president of the John Sealy Hospital Board, is a graduate of schools of medicine antagonistic to osteopathic physicians and surgeons, that he is prejudiced against practitioners of osteopathy, and that he assumes to control and direct all the subordinate employees of the said public hospital as to who may be admitted thereto as patients (R. 4). The John Sealy Hospital Board has enacted rules and regulations, and issued instructions to the employes of said hospital, denying admission to patients, charity and pay, seeking admission thereto, who desire to be treated by this appellant and other physicians and surgeons who practice osteopathic medicine and surgery (R. 4).

The rules, regulations and instructions issued by the John Sealy Hospital Board unjustly discriminate against appellant and other osteopathic physicians and

surgeons in favor of practicioners of other schools of medicine, depriving this appellant of the right to practice his profession, a valuable property right, and amounts to the taking of the property of this appellant without due process of law (R. 5).

It is alleged that the actions of the defendants in denying to this appellant the equal use of the public hospital and its facilities and refusing to admit his patients thereto has damaged him in the sum of three thousand five hundred dollars, is a violation of his constitutional rights under the Constitution of the United States and its amendments and entitles him to equitable relief (R. 5).

Answer.

The defendants composing the John Sealy Hospital Board, answered through the attorney general of Texas, filed a plea to the jurisdiction alleging that the suit was one against officers of the state and in effect a suit against the State of Texas and hence within the inhibition of the 11th Amendment, and that it was an attempt to supervise the conduct of persons charged with the duty in administering affairs of the state (R. 11). And further, that the matters charged in the bill of complaint were insufficient to entitle appellant to relief.

The defendants composing the mayor and commissioners of the City of Galveston, and the city itself, filed a plea to the jurisdiction because all parties, both plaintiff and defendants, were citizens and residents of the same state (R. 12). Further, that the defendants in charge of the hospital were state officers, and the suit was an attempt to enjoin the defendants in the dis-

charge of discretionary official duties; that the City of Galveston, its mayor and commissioners were neither necessary nor proper parties to the suit; that the hospital, though leased to the city, was the property of the State of Texas, operated by state agents; that the rules and regulations were reasonable; and that the hospital was used in connection with the State Medical College, an allopathic medical school, which did not teach osteopathy. The answer also contained a general demurrer that the bill of complaint was insufficient in law to state a cause of action (R. 12-14).

Proceedings In District Court.

The case was submitted on the pleadings and oral argument in open court. The cause was taken under advisement and on April 13, 1925, the district court made a docket entry dismissing the case for want of equity (R. 15).

Appeal was thereupon perfected direct to this court (R. 15-17).

SPECIFICATION OF ERRORS.

1.

That the district court erred in sustaining the motion to dismiss, and in dismissing plaintiff's bill for want of equity (R. 16).

2.

That the district court erred in failing to conclude as a matter of law, that the plaintiff, a physician and surgeon duly licensed under the laws of the State of Texas, has been and is being deprived of the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States, for the reason that the defendants, as state officers, have made rules and regulations admitting to practice in a public hospital only those physicians and surgeons who are graduates of allopathic schools and who practice allopathic medicine and surgery, and excluding plaintiff and other duly licensed physicians and surgeons who practice osteopathic medicine and surgery (R. 16-17).

3.

That the district court erred in failing to conclude as a matter of law, that the plaintiff's right to practice his profession in the John Sealy Hospital, a public hospital supported by the City of Galveston and by private charge to patients who use the same, is a valuable property right, and the action of the defendants as state officers, denying to plaintiff the equal right to

practice therein as a physician and surgeon, deprives him of his property without due process of law, and denies to him the equal protection of the law, in violation of his rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States (R. 17).

4.

That the district court erred in failing to find as a matter of law, that persons ready, able and willing to pay for hospital accommodations in the John Sealy Hospital, and who apply for same when rooms are available, and who desire the services of plaintiff, or of any other reputable physician and surgeon—whether such physician and surgeon practices osteopathic medicine and surgery or allopathic medicine and surgery—are entitled to receive accommodations in said hospital and to employ the plaintiff or any other reputable and duly licensed physician and surgeon of their choice (R. 17).

5.

That the district court erred in failing to find as a matter of law that charity patients in said public hospital who desire the services of plaintiff or any other duly licensed physician and surgeon, are entitled to receive such services in the said hospital without regard to whether the said physician and surgeon practices osteopathic medicine and surgery or allopathic medicine and surgery (R. 17).

6.

The district court erred in failing to find as a matter of law that the plaintiff was entitled to the relief prayed for in his petition (R. 17).

ARGUMENT.

The appellant conceives that it is incumbent upon him to show (1) that his right to practice medicine and surgery is liberty and property protected by the Constitution and its amendments, which (2) has been invaded by the action of the appellees in adopting regulations for a public hospital which deny to this appellant the equal use of the said hospital and its facilities solely because he practices osteopathic medicine and surgery, and (3) that the said appellees cannot claim the immunity of the state for wrongful acts done by them in their official capacity.

The appellant, Dr. Hayman, after several years of study, graduated from the College of Osteopathic Physicians and Surgeons of Los Angeles, California, and later removed to Texas, where he was duly licensed under the laws of the state as a physician and surgeon, and established himself in the City of Galveston, becoming a citizen of said city and state (R. 2).

In view of the discussion which will be had hereinafter we call attention to the fact that Dr. Hayman, while a graduate of an osteopathic school, is not licensed in Texas as an osteopath, but as a physician and surgeon. The law of Texas does not distinguish between allopaths, homeopaths, osteopaths and others. If found to be competent an individual is licensed as a physician and surgeon; the method of healing adopted being a matter of personal choice.

Article 16, Section 31 of the Constitution of Texas provides:

> "The legislature may pass laws prescribing the qualifications of practitioners of medicine in this state, and to punish persons for malpractice, *but no preference shall ever be given by law to any schools of medicine.*"

The legislature of Texas, true to the command of the constitution, in the enactment of a medical practice act, gave no preference to any school of medicine. Article 4495 specifically provided that the State Board of Medical Examiners, consisting of eleven men learned in medicine and in the actual practice, should be so constituted that no one school of medicine should have a majority representation on the board. Article 4501 provided that the graduates of any reputable medical school could take the examinations for license; and in order further to protect each applicant, Article 4503 provides that the applicant shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which they may be identified, in order that the examination shall be entirely fair to all individuals and to every school or system of medicine. The law further names the specific subjects on which the applicant shall be examined, no subjects peculiar to a particular school being included. The appropriate parts of the medical practice act are set forth in the appendix.

From these provisions it is sufficiently clear that the framers of the state constitution and the makers of the laws understood thoroughly the jealousies of the several schools of healing and endeavored to protect

the rights of a given individual, be he allopath, osteopath, homeopath, or what not.

The state is interested in the health of the people and so insists that each individual must have a basic knowledge of disease and body structure to enable him to diagnose the ailment; the particular method of treatment then being left to the judgment of the physician. As said by Judge Harper of the Court of Criminal Appeals of Texas, in the case of *Lewis* v. *State,* 69 Tex. Cr. App. 593, 155 S. W. 523:

> "In the first place, we want to call attention to the fact that the medical practice act does not seek to regulate how anyone shall treat disease or disorders; it simply provides that, before anyone shall treat, or offer to treat, diseases or disorders for the human family, he shall demonstrate that he is well grounded in certain studies named in the act. This is to compel a person to show he has a knowledge of the human frame, the organs of the body, and an ability to diagnose diseases, etc. If he shall pass this examination, then the treatment of disease is left to his judgment, and in no way does the act seek to control how any man shall treat disease. The misconception of the terms of the medical practice act has been the basis of much argument."

This view of the law has been consistently maintained in Texas. *Germany* v. *State,* 62 Tex. Cr. Rep.. 276, 137, S. W. 130; *Johnson* v. *State,* 267 S. W. 1057.

We think this preliminary statement is sufficient to show that Dr. Hayman would have been justified in believing that he would receive proper treatment in relation to his profession from the state and its agents at the time he established his practice in the City of Galveston.

FIRST POINT.

The right of a duly licensed physician and surgeon to practice his profession is liberty and property within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The first articulate declaration of the people of this country as a nation proclaimed to the world that the right to life, liberty and the pursuit of happiness is inherent in man. Incorporated therein is the right of the individual to follow such occupation or vocation as he may choose, subject only to the qualification that he must not interfere with the rights of others. These fundamental rights do not have their inception in governments, nor were they brought into being by laws or constitutions. They existed before man thought of and established governments, laws and constitutions. Governments were established to correlate the rights and duties of men. The rights of the individual are subordinate only to the rights of the many. This superior right of the many is called the police power. Any law or regulation which restricts the rights of the individual is void, unless it is a reasonable exercise of the police power and has a real and substantial relation to the protection of the public health, safety, morals or welfare.

It has been specifically held that the right to practice medicine, like the right to practice any other profession, is a valuable property right under the constitution and laws, in which one is entitled to be protected and secured. *Hewitt* v. *State Board of Medical Examiners,* 148 Cal. 590, 84 Pac. 39; *Matthews* v. *Murphy,* 23 Ky. Law. 750, 63 S. W. 785; 21 Ruling Case Law p.

352; *Butcher* v. *Maybury,* 8 F. (2d) 155; *Lawrence* v. *Briry,* 239 Mass. 424, 132 N. E. 174; *People* v. *Love,* 298 Ill. 304, 131 N. E. 809; *Chenoweth* v. *Board,* 57 Colo. 74, 141 Pac. 132; and dentistry, *Abrams* v. *Jones,* 35 Idaho 532, 207 Pac. 724. and Chiropody, *State* v. *Armstrong,* 38 Idaho, 493, 225 Pac. 491.

This court has held that the right to practice a kindred profession, the law, is something more than a mere indulgence, revocable at the pleasure of court or command of legislature; that it is a right of which the owner can only be deprived by the judgment of the court, for moral or professional delinquency. *Ex Parte Garland,* 4 Wallace 333, 18 L. Ed. 366. And in the companion case of *Cummings* v. *Missouri,* 4 Wallace 277, 18 L. Ed. 356, in the opinion by Mr. Justice Field, it is said:

> "The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty and the pursuit of happiness. and that in the pursuit of happiness all avocations, all honors, all positions are alike open to everyone, and that in the protection of these rights all are equal before the law."

The same great judge, in the case of *Dent* v. *West Virginia,* 129 U. S. 114, 32 L. Ed. 623, in discussing the same principles, says:

> "It is undoubtedly the right of very citizen of the United States to follow any lawful calling business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distin-

guishing feature of our republican institutions. Here all vocations are open to everyone on like conditions. All may be pursued as sources of livlihood, some requiring years of study and great learning for their successful prosecution. The interest, or as it is sometimes termed, the estate acquired in them, that is, the right to continue their prosecution cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken."

In the case of *Bar Association* v. *Sleeper*, 251 Mass. 6, 146 N. E. 269, 274, the Supreme Judicial Court of Massachusetts, speaking through Chief Justice Rugg, says:

> "The right of the respondent to practice his profession (the law) so long as he behaved himself therein is protected both by the Constitution of this commonwealth and that of the United States. That right is both liberty and property, partaking of the nature of both, and is guaranteed by constitutional mandate against unwarrantable interference. The respondent cannot be deprived of it except by proceedings with due process of law."

In the case of *People of New York* v. *Marx*, 99 N. Y. 377, 2 N. E. 29, Judge Rapallo in holding unconstitutional an act of the New York Legislature which unduly interfered with the right to carry on a legitimate business, says:

> "And the Fourteenth Amendment to the Constitution of the United States provides that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

These constitutional safeguards have been so thoroughly discussed in recent cases that it would be superfluous to do more than refer to the conclusions which have been reached, bearing upon the question now under consideration. Among these no proposition is more firmly settled than that it is one of the fundamental rights and privileges of every American Citizen to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit." * * *

"The term 'liberty' as protected by the constitution, is not cramped into a mere freedom from physical restraint of the person of the citizen as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. In the language of Andrews, J. in *Bertholf* v. *O'Reilly*, 74 N. Y. 515, the right to liberty embraces the right of man 'to exercise his faculties and to follow a lawful avocation for the support of life,' and, as expressed by Earl, J. in *Re Jacobs*, 'one may be deprived of his liberty, and his constitutional rights thereto violated, without the actual imprisonment or restraint of his person. Liberty, in its broad sense, as understood in this country, means the rights not only of freedom from actual servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

See also, *Wichita Electric Company* v. *Hinckley* (Tex. Civ. App.), 131 S. W. 1192; 21 Ruling Case Law, p. 353; *Wyeth* v. *Thomas*, 200 Mass, 474, 86 N. E. 925; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832; and concurring opinion of Mr. Justice Bradley in the case of *Butchers Union etc. Co.* v. *Cres-*

cent City etc. Co., 111 U. S. 746, 28 L. Ed. 585; *Coppage* v. *Kansas*, 236 U. S. 1, 59 L. Ed. 441, 35 Sup. Ct. 240.

The right of a professor to teach modern languages has recently been held to be protected by the liberty clause of the Fourteenth Amendment. *Meyer* v. *Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 43 Sup. Ct. 625.

We think it sufficiently appears that the appellant's right to practice his profession constitutes liberty and property within the meaning of the Fourteenth Amendment to the Constitution of the United States. This brings us to the question as to whether this right has been interfered with by the appellants.

SECOND POINT.

The regulations of a state board which do not operate equally and impartially on all persons of the same class and similarly situated is class legislation and void under the Constitution of the United States.

Since the appellees demurred to the allegations of the bill of complaint and moved to dismiss for want of equity, and the cause having been considered by the district court on the pleadings and then dismissed for want of equity, the sole question involved in this appeal is whether or not the allegations of the bill, if true, constitute a cause of action.

By the demurrer the appellees admit all the facts alleged, but deny that they state a cause entitling the appellant to relief.

For this proceeding, then, we have the following facts admitted:

That Dr. Hayman is a duly licensed physician and surgeon under the laws of Texas, a graduate of a

reputable college, who having complied with all the laws has established himself in the practice of his profession in the City of Galveston, and become a citizen of Texas. That the John Sealy Hospital is a public hospital, leased to and financed by the City of Galveston, supported by public funds raised by general taxation (R. 2-3). That the State of Texas neither contributes or donates money by taxation or otherwise to its support or maintenance (R. 3).

That the hospital is maintained by the city for the accommodation of the sick, be they charity or pay patients. That the hospital is controlled, as to finances and equipment by the City of Galveston, and the defendants mayor and commissioners of the said city, and that the internal control, management and regulation of the hospital is in the hands of the defendants composing the John Sealy Hospital Board (R. 4). That the defendant, Edward Randall, is president of the John Sealy Hospital Board, a physician and surgeon of the so-called "regular" or "allopathic" school, who is prejudiced against the plaintiff and other physicians and surgeons of the osteopathic school, and the defendant, Randall, controls the subordinate officers and employees of the hospital and issues instructions for the admission of patients (R. 4). That the John Sealy Hospital Board has enacted and promulgated rules and regulations and has issued instructions to the officers and employees of said hospital, denying admission to patients, ready, able and willing to pay for hospital services and accommodations who desire to be treated by the appellant and other osteopathic physicians and

surgeons (R. 4-5). That as a result of said rule, regulation and practice this appellant has been denied the *right to treat* patients at the said hospital, and patients ready, able and willing to pay for accommodations in said hospital have been denied admission thereto because they desired to be treated by this appellant, and that by reason thereof he has been damaged in the sum of $3,500.00 (R. 5). And that unless restrained the appellees will continue to so discriminate against the appellant and his patients.

In view of the facts herein stated and admitted by demurrer we do not see how it is possible to reach any conclusion but that the appellant has been discriminated against, and under the provision of the constitution is entitled to the relief prayed for.

The purpose of the regulation must be found in its natural operation and effect. The effect here produced is the exclusion from a public hospital of all physicians and surgeons who do not practice the healing art by methods satisfactory to the appellees, though the methods used are entirely satisfactory to the state and to the public generally.

This regulation being made by a board, the creation of which was authorized by an act of the legislature, would certainly be of less dignity than a legislative enactment. Most of the cases dealing with the principles which will be discussed herein have called in question legislative acts, and certainly the principles laid down would be much stronger as against mere administrative regulations than acts of a state legislature.

The appellant does not deny the power and right

of the legislature to make reasonable rules and regulations for the practice of medicine. It has been frequently held that it is the common exercise of legislative power to prescribe regulations for securing the admission of qualified persons to professions and callings demanding special skill, and no where is this undoubted exercise of the police power more wise or salutary, and more imperiously called for than in the practice of medicine.

Dankworth v. *State*, 61 Tex. Cr. App. 157, 136 S. W. 788; *Williams* v. *People*, 121 Ill. 87, 11 N. E. 881; *State ex rel. Powell* v. *State Medical Examining Board*, 32 Minn. 325, 20 N. W. 238; *Lewis* v. *State*, 69 Tex. Cr. App. 593, 155 S. W. 523; *Hicks* v. *State of Texas*, 88 Tex. Cr. App. 438, 227 S. W. 302; *Dent* v. *West Virginia*, 129 U. S. 114, 32 L. Ed. 623, 9 Sup. Ct. 231.

But as said in 21 Ruling Case Law, page 358:

> "Since a statute which regulates the practice of a profession and discriminates unreasonably against certain persons or classes of persons engaged therein is unconstitutional, the legislature cannot, under the present state of general medical knowledge, restrict all healing to any one school of thought or practice."

How much less then can such discrimination of an administrative board be justified:

Any enactment which discriminates against osteopaths and in favor of other schools of medicine, solely because they are osteopaths, is unconstitutional and void.

State v. *Gravett*, 65 Ohio St. 289, 62 N. E. 325.
People v. *Schaeffer*, 310 Ill. 547, 142 N. E. 248.

The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws. *Soon Hing* v. *Crowley*, 113 U. S. 703, 28 L. Ed., 1145.

As said in the concurring opinion of Mr. Justice Bradley, in the case of *Butchers' Union etc.* v. *Crescent City etc. Company*, 111 U. S. 746, 28 L. Ed. 585:

> "The ordinary pursuits of life, forming the large mass of industrial avocations, are and ought to be free and open to all, subject only to such general regulations, applying equally to all, as the general good may demand; and the grant to a favored few of a monopoly in any of these common callings is necessarily an outrage upon the liberty of the citizen as exhibited in one of its most important aspects, the liberty of pursuit."
>
> "But why is such a grant beyond the legislative power and contrary to the Constitution?"
>
> "The 14th Amendment of the Constitution, after declaring that all persons, born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside, goes on to declare that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.'"
>
> "But still more apparent is the violation, by this monopoly law, of the last clause of the section 'No state shall deny to any person the equal protection of the laws.' If it is not a denial of the

equal protection of the laws to grant to one man or set of men, the privileges of following an ordinary calling in a large community, and to deny it to all others, it is difficult to understand what would come within the constitutional prohibition."

And Mr. Justice Field, in his concurring opinion in the same case says:

"I cannot believe that what is termed in the Declaration of Independence a God-given and an inalienable right, can be thus ruthlessly taken from the citizen, or that there can be any abridgment of that right except by regulations alike affecting all persons of the same age, sex and condition. It cannot be that a state may limit to a specified number of its people, the right to practice law, the right to practice medicine, the right to preach the gospel, the right to till the soil or to pursue particular business or trades, and thus parcel out to different parties the various vocations and callings of life. The 1st Section of the 14th Amendment was, among other things, designed to prevent all discriminating legislation for the benefit of some to the disparagement of others."

This court in the case of *Barbier* v. *Connolly*, 113 U. S. 27, 28 L. ed. 923, said:

"The 14th Amendment, in declaring that no state 'Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws', undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that

they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances, that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

"Class legislation, discriminating against some and favoring others is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment."

And in *Smith* v. *Texas,* 233 U. S. 630, 58 L. ed. 1129, we find that:

"the state may prescribe tests and require a license from those who wish to engage in or remain in a private calling affecting the public safety. The liberty of contract is, of course, not unlimited; but there is no reason or authority for the proposition that conditions may be imposed by statute which will admit some who are competent and arbitrarily exclude others who are equally competent to labor on terms mutually satisfactory to employer and employee. None of the cases sustains the proposition that, under the power to secure the public safety, a privileged class can be created and be then given a monopoly of the right to work in a special and favored position. Such a statute would shut the door, without a hearing, upon many persons and classes of persons who were competent to serve, and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves."

In the case of *Wyeth* v. *Thomas,* 200 Mass. 474, 68 N. E. 925, the Supreme Judicial Court of Massachusetts, in an opinion by Chief Justice Knowlton, set aside as void a regulation made by the board of health of Cambridge, under which the petitioner had been denied the right to practice his trade, the court said that it was a violation of the applicant's constitutional rights to refuse to permit him to continue his business unless there was good reason for the refusal. In passing on the relative consideration to be given to such regulation as compared to an act of the legislature the court said:

> "If such a regulation had been made an act of the Legislature, with all the strong presumptions of constitutionality which attach to legislative action, we should hesitate to affirm the constitutionality of the act. But action by such a board under mere general authority to make rules and regulations, does not carry with it these strong presumptions. We consider this action without foundation in law or reason, and in violation of the constitutional rights of our citizens."

This court in the case of *Dent* v. *West Virginia, supra,* while upholding the right of the state to prescribe reasonable requirements for the practice of medicine, at the same time held that such qualifications could not be arbitrary. It is further said that the great purpose of the constitutional requirements was to exclude everything that was arbitrary and capricious in legislation affecting the rights of the citizen.

To the same effect is the case of *Yick Wo* v. *Hopkins,* 118 U. S. 356, 30 L. ed. 220, wherein this court in the opinion by Mr. Justice Matthews says.

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

"But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights the government of the Commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

"In the present cases, we are not obliged to reason from the probable to the actual and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directly so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and this representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth

Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in *Henderson* v. *Mayor, et. of New York*, 92 U. S. 259 (Bk. 23 L. ed. 543); *Chy Luny* v. *Freeman*, 92 U. S. 339 (Bk. 25 L. ed. 676); *Neal* v. *Delaware*, 103 U. S. 370 (Bk. 26 L. ed. 267), and *Soon Hing* v. *Crowley* (*supra*)."

In the more recent case of *Truax* v. *Corrigan*, 257 U. S. 312, 66 L. ed. 254, 42 Sup. Ct. 124, the present Chief Justice, speaking for the court, says:

"Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men'; 'No man is above the law'—are maxims showing the spirit in which legislatives, executives, and courts are expected to make, execute and apply laws. But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty."

"The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality of treatment of all persons even though all enjoyed the protection of due process."

"Thus, the guaranty was intended to secure equality of protection not only for all, but against all similarly situated. Indeed, protection is not pro-

tection unless it does so. Immunity granted to a class, however, limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." * * *

"Classification must be reasonable. As was said in *Gulf, C. & S. F. R. Co.* v. *Ellis,* 165 U. S. 155, 41 L. ed. 668, 17 Sup. Ct. 255, classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

And in the case of *State* v. *Hinman,* 65 N. H. 103, 18 Atl. 194, it is said:

"While the power of the legislature to impose restrictions upon the exercise of certain trades and professions for the protection of the public is unquestioned, it must be exercised in conformity with the constitutional requirement that such restrictions must operate equally upon all persons pursuing the same business or profession under the same circumstances. The constitutionality of a statute cannot be sustained which selects particular individuals from a class or locality, and subjects them to peculiar rules, or imposes upon them special obligations or burdens from which others, in the same locality or class are exempt."

See also to the same effect *State* v. *Pennoyer,* 65 N. H. 113, 18 Atl. 878, 5 L. R. A. 709; *Gage* v. *New Hampshire Electic Medical Society,* 63 N. H. 92, 56 Am. Rep. 492; *Lochner* v. *New York,* 198 U. S. 45, 49 L. ed. 937; 25 Sup. Ct. 539; *Bowman* v. *Lewis,* 11 Otto, 22, 25 L. ed. 987; *Ritchie* v. *People,* 155 Ill. 98, 40 N. E. 454;

People v. *Love*, 298 Ill. 304, 131 N. E. 809; *Bailey* v. *People*, 190 Ill. 28, 60 N. E. 98.

And in the case of *Douglas* v. *Noble*, 261 U. S. 165, 67 L. Ed. 590, in the opinion by Mr. Justice Brandeis, the court says:

> "What authority the statute purports to confer upon the board is a question of construction. If it purported to confer arbitrary discretion to withhold a license, or to impose conditions which have no relation to the applicant's qualifications to practice dentistry the statute would, of course, violate the due process clause of the 14th amendment."

Nor have the courts been slow to take notice of the fact that there exists a jealousy between the different schools of medicine and that the adherents of one school are not slow to take advantage of or discriminate against the practitioners of another system. This activity has been largely directed by the so-called regular or allopathic physicians and surgeons, probably because they are the ones intrenched in the profession and having the benefit of numbers on their side. The State of Texas has made no distinction between physicians and surgeons because of the system to which one may belong and certainly a mere administrative board dominated by adherents of one school of medicine cannot say that others of equal grade and dignity in the eyes of the law shall be excluded from the equal use of public facilities.

The Supreme Court of Illinois in the case of *People* v. *Schaeffer, supra,* said:

> "We are only concerned with the question whether this act is unconstitutional by reason of unlawful discrimination, as charged. As we have

previously said in other cases, we have no leaning for or against either system or either practitioner. It has been demonstrated over and over again that there is merit in both systems, and neither should be unjustly penalized by statutes which permit unlawful discrimination. This statute is in contravention of the Fourteenth Amendment of the Federal Constitution, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

"It is a fundamental principle of this Government that its people have the right to make constitutions that will guard them against tyranny of statutes that permit unlawful discrimination, however innocently or inadvertently made, and courts are required to regard their constitutional oaths and declare every such statute void when it conclusively appears that such act is unconstitutional."

Nor can adherents of any particular school of medicine decide for mankind that their own system of healing is now and shall ever be the only correct one. *State* v. *Biggs,* 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139.

In the Biggs case, *supra,* the court pays its respects to those who arrogate to themselves privileges which they deny to others. Taking into consideration the history of the science of medicine from the earliest known records, it would seem that any given school and its adherents would be slow to announce with finality that it and no others offered remedies for human ailments, and hence the others should be excluded from the rights, privileges and emoluments pertaining to the practice of medicine. They might do well to consider the suc-

cession of systems, such as the humoral, the solidist, the pneumatic, the iatro-chemical, the iatro-physical, the animist and the vitalist of ancient times, to say nothing of the allopath, the homeopath, the eclectic, the faith-healer and others of modern time.

As said by the court in the Biggs case, *supra*:

> "Those not M. D's contend that the allopathic system of practice is contrary to the discoveries of science, and injurious to the public. Some M. D's doubtless believe that all treatment of disease, except by their own system, is quackery. Is this point to be decided by the M. D's themselves, through an examining committee of five of their own number, or is the public the tribunal to decide by employing whom each man prefers, whether allopath, homeopath, osteopath, or the defendant? The law says that the M. D's may examine and certify whether an applicant is competent to be one of their number, and no one can practice medicine and surgery without it; but they cannot decide for mankind that their own system of healing is now and ever shall be the only correct one, and that all others are to be repressed by the strong arm of the law."
>
> "In the cure of bodies, as in the cure of souls, 'orthodoxy is my doxy, heterodoxy is the other man's doxy,' as Bishop Warburton well says. This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall use."
>
> "Dr. Oliver Wendell Holmes, in an address before the Medical Society in Massachusetts, said: 'If the whole *materia medica* was sunk to the bottom of the sea, it would be all the better for mankind and all the worse for the fishes.' An eminent medical authority in this state has said that out of twenty-four serious cases of diseases three could not be cured by the best remedies, three others might be benefited, and the rest would get well any-

way. Stronger statements could be cited from the most eminent medical authorities the world has known. Medicine is an experimental, not an exact science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs, but it cannot forbid dispensing with them. When the Master, who was himself called the Good Physician, was told that other than His followers were casting out devils and curing diseases He said, 'Forbid them not.' "

The John Sealy Hospital Board created under authority of the legislature, in making rules and regulations for the operation of the municipal hospital in the City of Galveston, are bound to make reasonable rules and regulations for the benefit of the whole people, and such regulations as may affect the practice of medicine must be fair and impartial among all physicians and surgeons.

As said by the Supreme Court of California, in the case of *ex parte Gerino,* 143 Cal. 412, 77 Pac. 166:

> "The power of the state to constitute such a board, and to impose restrictions upon the right to practice medicine, to be enforced by the board, could not be upheld at all if it were put upon the ground that in so doing the state is acting for the benefit of any one or all of the medical societies or schools of medicine existing in the state."
>
> "The board constitutes a state agency for the regulation of the practice of medicine and surgery, and it must discharge that duty under oath and impartially for the benefit of the people and not for the promotion of the interests of any school of medicine or medical society."

So, too, the Supreme Court of Missouri in the case of *State ex rel, McCleary* v. *Adcock et al,* 206 Mo.

550, 105 S. W. 270, stated that the law does not place in the hands of administrative boards arbitrary power, and if used arbitrarily the courts will grant to the applicant the proper remedy. In that case the graduate of an eclectic school applied to the state board for a license to practice medicine. The state board, composed of a majority of allopaths, refused to grant the license, the applicant charging that such refusal was based upon bias and prejudice against him because he was the disciple of a different school of medicine. The court issued a writ of mandamus to the board compelling the issuance of the license, holding that the refusal had been arbitrary. The claim of the board that they were entitled to use discretion called forth the pronouncement by the court that discretion must always be reasonable and not arbitrary.

See too case of *Hewitt* v. *State Board of Medical Examiners, supra.* Rules and regulations of a public board must be reasonable and uniform. Whether they are or not will be determined by the courts when the question is presented. *Kettles* v. *People,* 221 Ill. 221, 77 N. E. 472; *Schappi Bus Line* v. *City of Hammond,* 11 F. (2d) 940 (Circuit Court of Appeals, Seventh Circuit).

We believe that the action of the John Sealy Hospital Board can no more be sustained than could the action of the county commissioners of the average Texas county be upheld, if in administering the county courthouse that board should refuse to admit thereto any lawyer or set of lawyers solely because those proscribed graduated from some law school against whom the board was prejudiced. Arbitrary laws or regulations which

militate against a minority are inherently vicious and dangerous. We do not believe there is a physician in the actual practice anywhere who would not state emphatically that the converse of the present case would be an unconstitutional exercise of power. If in the instant case the hospital board should be under the control of osteopaths, and regulations were adopted barring all other physicians and surgeons, the doctors of the regular school would be in arms instantly. The mere statement of the case seems to demonstrate clearly its unjustifiable nature.

As said by the New York Court of Appeals in the case of *People* v. *Marx, supra,* wherein the manufacturers and distributors of dairy products had secured the enactment of a law prohibiting the manufacture of vegetable substitutes:

> "Measures of this kind are dangerous, even to their promoters. If the argument of the respondents in support of the absolute power of the legislature to prohibit one branch of industry for the purpose of protecting another with which it competes can be sustained, why could not the oleomargarine manufacturers, should they obtain sufficient power to influence or control the legislative councils, prohibit the manufacture or sale of dairy products? Would arguments then be found wanting to demonstrate the invalidity under the constitution of such an act? The principle is the same in both cases. The numbers engaged upon each side of the controversy cannot influence the question here. Equal rights to all are what are intended to be secured by the establishment of constitutional limits to legislative power, and impartial tribunals to enforce them."

See also the same reasoning in the case of *Cummings* v. *Missouri*, 4 Wallace 277, 18 L. Ed. 356.

The appellant licensed by the State of Texas to practice as a physician and surgeon anywhere and everywhere in the state, is arbitrarily excluded by a board, a creature of the state, from practicing his profession in a public hospital where others with identical licenses are welcomed.

As said by the Supreme Court of Georgia in the case of *Cosgrove* v. *Augusta*, 103 Ga. 835, 31 S. E. 445, 42 L. R. A. 711:

> "An ordinance which prescribes that certain persons shall not carry on their business, which would otherwise be legitimate, in a particular place, or on certain premises, is, as to such place or premises, clearly prohibitive; and to authorize the passage of such an ordinance, where the power is undoubted, the injury to the public, which furnishes the justification for the ordinance, should proceed from the inherent character of the business when conducted at such place or upon such premises."

Inasmuch as Dr. Hayman, and other physicians and surgeons whose training was obtained in osteopathic colleges are licensed by the state to practice their profession anywhere in the state, it would seem there could hardly be any particular danger resulting from their practice in a public hospital. If an osteopath's treatment is pernicious if carried on in a public hospital, it would be just as injurious elsewhere, and if not harmful anywhere else in the state it is certainly not harmful in a particular place in the state, such as a public hospital.

The legislature has provided in Article 4506 of the Revised Civil Statutes of Texas, 1925, the means by which, and in Article 4505 the causes for which a duly licensed physician may be excluded from the practice of his profession. These statutes are set forth in Appendix A. A board, created by the state, clearly has no right of authority by its rules and practices to add to the grounds for exclusion prescribed in the statute. Yet, in this case, Dr. Hayman, and the other physicians and surgeons in Galveston who practice osteopathy, have arbitrarily been excluded from a public place, solely because of the prejudice of the members of the Board of the Sealy Hospital, appellees herein, against that school of healing.

This prejudice, and especially that of the president of the John Sealy Hospital Board, as alleged in the petition and admitted by the demurrer, resulted in the adoption of the rules, regulations and practices complained of, and the exclusion of appellant and other physicians and surgeons who obtained their training in osteopathic colleges. Article 4501 of the Texas Civil Statutes provides that all applicants for license must be of good moral character and graduates of *bona fide,* reputable medical schools. Since the college from which appellant was graduated, the College of Osteopathic Physicians and Surgeons, of Los Angeles, California, was satisfactory to the state, as evidenced by the license issued to Dr. Hayman, we think it must be held to be sufficient for the appellees, at least in their official capacity as agents of the state.

Although it is not material as we view the case, it might be added that the prerequisites to a degree in the

first class colleges of osteopathy are in no wise inferior to those in the allopathic schools. As a matter of general information we have listed in Appendix B a list of subjects required for a degree from two standard medical colleges and two colleges of osteopathy. There is no justification for the prejudice against the osteopath either in law, in fact, or in reason.

THIRD POINT.

A suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional law, ordinance or regulation is not a suit against the state within the meaning of the Eleventh Amendment to the Constitution of the United States.

The attorneys for the appellees both in their answers and in oral argument before the district court presented so vigorously their contention that this is a suit against the State of Texas, within the meaning of the Eleventh Amendment to the Constitution of the United States, that appellant believes it is appropriate to negative that contention, although it was not sustained by the trial court.

The theory of the appellees seems to be that because the State of Texas holds the legal title to Block 668 in the City of Galveston, the property upon which the hospital is situated, that therefore this is a suit against the state and an attempt upon the part of appellant to impose upon state property an easement or use in his favor. This, they assert, is not permissible for the reason that the state's use of its property cannot be controlled, and further that there is no jurisdiction in the Federal courts to inquire into such a cause.

The vice in this argument is that it overlooks entirely the fact that the hospital has been leased by the State of Texas to the City of Galveston for a term of years ending on the 9th day of May, 1938 (R. 6). The first numbered paragraph of the lease (R. 7) provides that the property shall be used exclusively by the City of Galveston for hospital purposes. The control of the institution is dual; a board created by the lease and known as the John Sealy Hospital Board having charge of the internal conduct and management of the hospital, and the mayor and commissioners of the City of Galveston having entire control of the financial and business affairs of the institution (R. 8-9).

The fact that the State of Texas has the legal title is immaterial because the lease has legally placed the possesion, use, control and management in the hands of the two bodies mentioned above. To all intents and purposes the situation is the same as if the property had been leased to the City of Galveston by an individual. Certain rights of user are reserved to the faculty and students of the medical college, but these conditions are such as might be imposed upon property by any lessor in favor of a third person.

The appellant is not attempting to impose an easement upon state property which will give him special privileges not granted to others, but is insisting that a public municipal hospital supported by taxation is not the private property of the agents nor subject to be operated under rules and regulations adopted by them which arbitrarily place its facilities at the disposition of certain physicians and surgeons and their

patients and as arbitrarily deny its use to other physicians and surgeons and that portion of the public who constitute their patients, present or prospective.

This court in a multitude of cases has drawn the distinction between suits against the state and suits against agencies of the state claiming to act under grant of authority from the state.

As said in the case of *Ex Parte Virginia,* 100 U. S. 339, 25 L. Ed. 676, in the opinion by Mr. Justice Strong:

> "We have said the prohibitions of the 14th Amendment are addressed to the states. They are: 'No state shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to actions of the political body denominated a state, by whatever instruments or in whatever modes that action may be taken. A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning. Then the state has clothed one of its agents with power to annul or to evade it."

See also *Hopkins* v. *Clemson Agricultural College,* 221 U. S. 636, 55 L. Ed. 890; *Chicago, B. & Q. Ry. Co.*

v. *Chicago,* 166 U. S. 224, 41 L Ed. 979; *Scott* v. *Donald,* 165 U. S. 58, 41 L. Ed. 632; *Scott* v. *Donald,* 165 U. S. 107, 41 L. Ed. 648; *Pennoyer* v. *McConnaughy,* 140 U. S. 1, 35 L. Ed. 363; *Reagan* v. *Farmers Loan & Trust Company,* 154 U. S. 362, 38 L. Ed. 1014.

Mr. Justice Harlan, speaking for the court in the case of *Smyth* v. *Ames,* 169 U. S. 466, 42 L. Ed. 819, says:

> "It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of that amendment."

To the same effect are *M. K. & T. Ry. Co.* v. *Missouri Commissioners,* 183 U. S. 53, 46 L. Ed. 78; *Prout* v. *Starr,* 188 U. S. 537, 47 L. Ed. 584; *McNeill* v. *Southern Railway Company,* 202 U. S. 543, 50 L. Ed. 1142; *Western Union* v. *Andrews,* 216 U. S. 165, 54 L. Ed. 431; *Ludwig* v. *Western Union,* 216 U. S. 146, 54 L. Ed. 423; *Herndon* v. *Chicago, R. I. & P. R. Co.,* 218 U. S. 135, 54 L. Ed. 970; *Harrison* v. *St. Louis & S. F. Ry. Co.,* 232 U. S. 318, 58 L. Ed. 621.

The majority of the cases cited next above dealt with state agents claiming to act under authority of state laws. The provisions of the Fourteenth Amendment, however, are not confined to the action of the state through its legislative, executive or judicial authority, nor to those agents who set up legislative enactments as a justification of their acts. Its protection may be claimed against those who invade the rights of the citizen and justify the invasion under the authority

of a municipal ordinance. *Home Telephone etc. Company* v. *Los Angeles,* 227 U. S. 278, 57 L. Ed. 510; *St. Paul Gaslight Co.* v. *St. Paul,* 181 U. S. 142, 45 L. Ed. 788. And against the arbitrary exercise of its functions by a board. *Raymond* v. *Chicago Union Traction Co.,* 207 U. S. 20, 52 L. Ed. 78; *Yick Wo* v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 220; *Fidelity & Deposit Co. of Maryland* v. *Tafoya,* .... U. S. ...., 70 L. Ed. 379, ... Sup. Ct. ....; *Kettles* v. *People, supra; Schappi Bus Line* v. *City of Hammond, supra.*

The appellees in this case by their answers insist (R. 11-13) that they are officers of the State of Texas and this suit is an attempt to supervise and control them and to interfere with them in the exercise of discretionary duties. We can only answer that if they were not the agents of the state they would not be in a position to arbitrarily deprive this appellant of his rights as they have done and continue to do, and further that a suit to enjoin them from doing things they have no right to do is not an interference with their discretion. As said in the case of *Ex Parte Young,* 209 U. S. 123, 52 L. Ed. 714:

> "An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer."
>
> "The act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting, by the use of the name of the state, to enforce a legislative enact-

> ment which is void because unconstitutional. If the act which the state attorney general seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

To the lay mind it must seem paradoxical, to say the least, in the case before the court that the city attorney of the City of Galveston and the attorney general of the great State of Texas rush into court to represent and justify the appellees in an unjust and arbitrary discrimination against Dr. Hayman and the other physicians and surgeons of Galveston who practice osteopathy in the very teeth of the command of the Constitution of Texas that "no preference shall ever be given by law to any school of medicine." That which cannot be done by law, the appellees would do by practice and regulation.

We assert that the appellant is acting more for the interest of the State of Texas and in accord with her express commands than are those who seek here to interpose the shield of the state to justify their practices. In the language of Mr. Justice Matthews in the case of *Poindexter* v. *Greenhow*, 114 U. S. 270, 29 L. ed. 185:

> "The defendant in error is not her (the state's) officer, her agent or her representative, in the matter complained of, for he has acted not only without her authority, but contrary to her ex-

press commands. The plaintiff in error, in fact and in law, is representing her, as he seeks to establish her law and vindicates her integrity as he maintains his own right."

Conclusion.

We believe that there is no basis for the contention of the appellees that this is a suit against the State of Texas, and we further believe that it is clear that the district court erred in sustaining the motion to dismiss and in dismissing appellant's bill for want of equity.

The case having been considered on the pleadings, and dismissed on motion, of course this court will consider all the allegations of the appellant's original bill as admitted and merely consider whether the facts alleged being true entitle him to relief. Such being the case, we feel that the right of the defendant to practice his profession has been arbitrarily interfered with by the rules and regulations and practices adopted by the appellees in running the municipal hospital at Galveston.

We further believe that under the facts shown, and under the Constitution and its amendments as construed by this court, that the right of the appellant to practice his profession is liberty and property within the meaning of the Fourteenth Amendment to the Constitution of the United States, and that rules and regulations admitting to practice in the municipal hospital only those surgeons and physicians who are graduates of allopathic schools and who practice allopathic medicine and surgery, such as is shown in this case, constitute an arbitrary interference with the rights of the appellant and are null and void.

The appellant further believes under the law and the facts that his patients are entitled to equal accommodations in the John Sealy Hospital, and that the action of the appellees in barring them constitutes an unlawful discrimination against him on their part as members of the board, a state agency, which entitles him to damages and the injunctive relief prayed for in his original bill.

The appellant further believes that under the facts and law as herein shown, that he has equal rights with other physicians and surgeons of the City of Galveston to wait upon charity patients in the said municipal hospital at Galveston, and gratuitously serve them upon call, and believes that the rules, regulations and practices admitted herein by the appellees deny his constitutional right in this respect.

It is respectfully submitted that the decree of the district court in this case should be reversed and the cause remanded.

Respectfully submitted,

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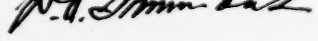

APPENDIX A.

Art. 4495. The Board of Medical Examiners for the State of Texas shall consist of eleven men learned in medicine, legal and active practitioners in this state, who shall have resided and practiced medicine in this state under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong for more than three years prior to the appointment. No school shall have a majority representation on said board. Said board shall be appointed biennially by the governor within ninety days after his inauguration, and the term of office of its members shall be two years. No member of said board shall be a stockholder or member of the faculty or a board of trustees of any medical school. The word "medicine" as used in this article shall have the same meaning and scope as given to it in the article defining it (Acts 1907, p. 224, Sec. 1).

Art. 4501. Examination. All applicants for license to practice medicine in this state, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable, medical schools. Such school shall be considered reputable within the meaning of this law, whose entrance requirements and course of

instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of eight months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of twenty-five dollars; except when an applicant desires to practice obstetrics alone, the fee of which shall be five dollars. Such applicant shall be given due notice of the date and place of examination. Applicants to practice obstetrics in this state, upon proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. If any applicant, because of failure to pass examination, be refused a license, he or she shall, at such time as the Board of Medical Examiners shall fix, be permitted to take subsequent examination upon subjects required in original examinations as the said board may prescribe, upon the payment of such part of twenty-five dollars as the said board may determine and state; and said board may, in the event satisfactory grades shall be made in the subjects prescribed and taken in such re-examination, grant to the applicant license to practice medicine (Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 287).

Art. 4503. Details of examinations. All examinations to practice medicine shall be conducted in writing

in the English language and in such manner as shall be entirely fair and impartial to all individuals and to every school, or system of medicine, the applicants being known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined and license ordered, granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice medicine. All questions and answers, with grades attached, shall be preserved in the executive office of the board for one year. All applicants examined at the same time shall be given identical questions in each of the above named branches. All certificates shall be attested by the seal of the board and signed by all members of the board, or a quorum thereof. The board may in its discretion give its examination for license in two parts. The first part shall include such of the required scientific branches of medicine named above as may be prescribed by the board. The second, or final part of the examination shall not be given until the applicant has graduated and received a diploma from a reputable medicine college. This, the second or final part of the examination shall include all of the scientific branches of medicine prescribed by this law not included and passed by the applicant in the first, or partial, ex-

amination, but no license to practice medicine shall issue to such an applicant or examinee unless and until he or she has been examined in all of the scientific branches of medicine prescribed by this law and made the general average or averages required by the board. The application for the first partial examination shall be accompanied by an affidavit from the dean or registrar of a reputable medical college, stating that applicant has successfully completed the work of the first two years of the college course, and a fee of fifteen dollars; the application for the second, or final, part of the examination shall include an affidavit showing that the applicant is a graduate of a reputable medical college, in good standing with this board, and a fee of twenty-five dollars. The board is authorized to make all rules as to credit to be given for partial examinations, and re-examinations of failed examinees in partial or complete examinations, and changes in procedure necessary to conduct the examination for license in two parts. But it shall be optional with the applicant for examination for license whether he or she shall take the twelve branches of medicine prescribed by this law in one examination session of the board or in two separate sessions. All applicants for examination by said board who cannot speak or write the English language must pay an additional charge of thirty dollars for the services of an interpreter, who shall fairly and accurately translate to the applicant each question propounded to applicants in such examination, and receive from said applicant full answer to said question and translate the said answer fully and with accuracy for the applicant and write the an-

swer thus translated in the answers to said questions furnished to the board for examination and grading (Acts 1907, p. 224; Acts 1923, p. 288).

Art. 4504. Construction of this law. Nothing in this law shall be so construed as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministration to the sick or suffering by prayer without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, and that no charge is made therefor, directly or indirectly. The provisions of this chapter do not apply to dentists legally qualified and registered under the laws of this state who confine their practice strictly to dentistry; nor optometrists who confine their practice strictly to optometry, as defined in this title; nor to nurses who practice only nursing; nor to masseurs in their particular sphere of labor who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service in performance of their duties, but shall not engage in private practice without license from the Board of Medical Examiners; nor to legally qualified physicians of other states called in consultation; but who do not open office or appoint places in this state where patients may be met or called to see. This law shall be so construed as to apply to persons other than licensed druggists of this state not pretending to be physicians who offer for sale on the streets or other public places remedies which they recommend for the cure of disease (Acts 1907, p. 224, Acts 1923, p. 289).

Art. 4505. May refuse to admit certain persons. The State Board of Medical Examiners may refuse to admit persons to its examinations, or to issue the certificate provided for in this law, for any of the following causes:

1. The presentation to the board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

2. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring or aiding or abetting the procuring of a criminal abortion.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients; provided, that any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court of the county in which some member of the board shall reside (Id. Sec. 11).

Art. 4506. Revocation of license. The right to practice medicine in this state may be revoked by any court of competent jurisdiction, upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Medical Examiners is authorized to refuse to admit persons to its examinations as provided in the preceding article; and it shall be the duty of the several district and county attorneys of this state to file and prosecute appropriate judicial proceeding in the name of the state, on request of any member of said board (Id. Sec. 12).

APPENDIX B.

Being a comparison of subjects and number of hours required for graduation from two standard medical colleges, Yale and Harvard, with two osteopathic colleges, Kirksville Osteopathic College, and College of Osteopathic Physicians and Surgeons, Los Angeles, California.

The tables are copied from the current catalogues of the several schools.

Yale School of Medicine

Synopsis of Required Courses, 1925-26.

(Copied from pages 68, 69 of the Bulletin of the Yale School of Medicine, 1925-1926.)

First Year

	First Term	Second Term	Total Hours for Year.
Anatomy	12	12	360
Microscopic Anatomy	8		120
Embryology and Anatomy of the Central Nervous System		8	120
Physiological Chemistry	12		180
Physiology		12	180
Elementary Bacteriology	7		105
Total			1065

Second Year

	First Term	Second Term	Total Hours for Year
Pathology	9	4	195
Gross Pathology	2	2	60
Pharmacology and Toxicology	9		135
Medicine	4	2	90
Biochemical Methods	6		90
Clinical Microscopy	1	4	75
Bacteriology	1	4	75
Physical Diagnosis	1	4	75
Electives			90
Total			885

Third Year

	First Term	Second Term	Total Hours for Year
Surgery	2	2	60
Surgical Clinic	1	1	30
Obstetrics and Gynecology	4	1	75
Gynecological Clinic		1	15
Manikin	1		15
Gynecological Pathology		2	30
Medical Clinic	1	1	30
Therapeutics	2		30
Psychiatry		2	30
Hospital Ward Work, Medicine)			(168
Hospital Ward Work, Surgery)			(168
Hospital Ward Work, Obstetrics and Gynecology)	28 hrs. a wk. 6 wks.		(168
Hospital Ward Work, Pediatrics)			(168
Electives			90
Total			1077

The Curriculum

Fourth Year

	First Term	Second Term	Total Hours for Year
Medical Clinic	1	1	30
Dermatology	1	1	30
Surgical Clinic	1	1	30
Oto-Rhino-Laryngology	1	1	30
Opthalmology	1	1	30
Public Health	6		90
Pediatrics		3	45
Pediatric Clinic	1	1	30
Medical Dispensary)			(108
Surgical Dispensary) 18 hours a week for 6 wks			(108
Pediatrics Dispensary)			(108
Dermatology Dispensary 4½ hours a week for 6 weeks			27
Urology Dispensary 7½ hours a week for 6 weeks			45
Orthopedics Dispensary 4½ hours a week for 6 weeks			27
Laryngology Dispensary 3 hours a week for 6 weeks			18
Ophthalmology Dispensary 4½ hours a week for 6 weeks			27
Electives			135
Total			918

Harvard Medical School

(Copied from page 52 of the Bulletin of the Harvard Medical School, 1925-1926.)

Division of Studies

And Total Number of Hours for Each Subject.

First Year		Second Year	
Anatomy	220	Anatomy	40
Histology and Embryology	220	Bacteriology	144
Physiology	232	Pathology)	
Biochemistry	232	Neuropathology)	304
Medical Phychology	10	Parasitology	36
		Pharmacology	104
		Clinical Pathology	90
		Medicine)	
		Surgery)	161
		Neurology	10
		Obstetrics	12
		Pediatrics	6
	914		907
Third Year		Fourth Year	
Psychiatry	46	Electives	144
Preventive Medicine and Hygiene	36	Pediatrics	144
Legal Medicine	8	Medicine	432
Dermatology	46	Surgery	288
Syphilology	38	Obstetrics	144
Gynaecology	38		
Laryngology	38		
Pediatrics	65		
Medicine	196		
Orthopaedic Surgery	42		
Genito-Urinary Surgery	30		
Surgery	157		
Neurology	38		
Obstetrics	62		
Otology	38		
Opthalmology	38		
	916		1152

Kirksville Osteopathic College

(Copied from pages 29, 30, 31 of the Bulletin of the Kirksville Osteopathic College, 1925-1926.)

Courses by Years

First Year

First Semester.

	Hrs. Week	Total Hours
Anatomy (Practical)	5	90
Biology	3	54
Biology (Laboratory)	2	36
Chemistry (Inorganic)	5	90
Chemistry (Laboratory)	4	72
Embryology	3	54
Embryology (Laboratory)	2	36
Histology	2	36
Histology (Laboratory)	1	18
Total	27	486

Second Semester

Anatomy (Practical)	8	144
Chemistry (Organic)	5	90
Chemistry (Laboratory)	4	72
Histology	4	72
Histology (Laboratory)	3	54
Hygiene	3	54
Total	27	486

Second Year

First Semester

Anatomy (Dissection)	8	144
Chemistry (Physiological)	4	72
Chemistry (Laboratory)	2	36

Toxicology	2	36
Toxicology (Laboratory)	2	36
Pathology	4	72
Pathology (Laboratory)	2	36
Physiology	4	72
Physiology (Laboratory)	2	36
Total	30	540

Second Semester

Anatomy (Dissection)	3	54
Bacteriology	10	180
Pathology	4	72
Pathology (Laboratory)	2	36
Physiology	4	72
Physiology (Laboratory)	2	36
Principles of Osteopathy	5	90
Total	30	540

Third Year

First Semester

Anatamy (Clinical)	5	90
Dietetics	3	54
Gynecology	3	54
Gynecology (Clinical)	2	36
Hydrotherapy	1	18
Obstetrics	5	90
Osteopathic Technique	2	36
Physical Diagnosis	3	54
Practice	5	90
Toxicology	1	18
Total	30	540

Second Semester		
Clinic Practice (Treating)	6	108
Differential Diagnosis	3	54
Eye, Ear, Nose and Throat	3	54
Gynecology	2	36
Gynecology (Clinic)	2	36
Osteopathic Clinics	5	90
Osteopathic Technique	2	36
Obstetrics (Clinic)	2	36
Practice	5	90
	30	540
Fourth Year		
First Semester		
Pediatrics	2	36
Clinic Practice (Treating)	6	108
Differential Diagnosis	3	54
Eye, Ear, Nose and Throat (clinic)	4	72
Osteopathic Clinics	5	90
Osteopathic Technique	2	36
Surgery	12½	225
Total	34½	621
Second Semester		
Clinical Diagnosis	2	36
Dermatology	1	18
Medical Jurisprudence	1	18
Nervous Diseases	4	72
Oral Sepsis	1	18
Eye, Earl, Nose and Throat Clinic	4	72
Osteopathic Technique	2	36
Pediatrics (Clinic)	1	18

Proctology	1	18
Psychiatry	4	72
Surgery	11½	207
Urology	1	18
X-Radiance	1	18
Total	34½	621

College of Osteopathic Physicians and Surgeons
Los Angeles, California

(Copies from the 1925-1926 Catalogue of the College, pp. 31, 32 and 33.)

Professional Course

Freshman Year

First Trimester

Osteology and Syndesmology (Anatomy I)	36
Lower Extremity and Abdomen (Anatomy II)	120
Histology I	108
Bio-Chemistry (Chemistry I)	108
	372

Second Trimester

Upper Extremity and Thorax (Anatomy III)	120
Histology Ia	108
Bio-Chemistry (Chemistry Ia)	108
	336

Third Trimester

Head and Neck (Anatomy IV)	120
Applied Anatomy of the Spinal Column (Anatomy V)	24
Bandaging (Surgery I)	12
General Bacteriology (Pathology I)	96

Princ. of Physiology (Physiology I)	120
	372

Sophomore Year

First Trimester

Nervous System (Anatomy VI)	108
Pathogenic Bacteriology (Pathology II)	108
Physiology of Maintenance (Physiology II)	120
Physical Diagnosis (Diagnosis I)	12
	348

Second Trimester

Applied Nervous Anatomy (Anatomy VII)	36
Physiology of the Nervous System (Physiology III)	120
General Pathology (Pathology III)	132
Physical Diagnosis (Diagnosis II)	60
	348

Third Trimester

Surgical Anatomy (Surgery II)	36
Special Pathology (Pathology IV)	132
Materia Medica (Pharmacology I)	84
Principles of Osteopathy (General Therapy II)	36
Physical Diagnosis (Diagnosis IIa)	60
First Aid (General Therapy I)	12
	360

Junior Year

First Trimester

Technique (General Therapy III)	48
Normal Obstetrics (Obstetrics I)	48
Infectious Diseases (General Therapy IV)	48

General Pharmacology (Pharmacology II)	60
Laboratory Diagnosis (Diagnosis III)	48
Diseases of External Genitalia (Gynecology I)	48
Genito-Urinary Diseases (General Therapy IX)	36
Jurisprudence (Miscellaneous)	12
Clinical Practice (Fifty Treatments)	25
	373

Second Trimester

Technique (General Therapy IIIa)	48
Pathological Obstetri	48
Respiratory and Circulatory Diseases (General Therapy V)	48
Diseases of Internal Genitalia (Gynecology II)	48
Opthalmology (Surgery XV)	48
Nervous Diseases (General Therapy XII)	24
Principles of Surgery (Surgery III)	60
Genito-Urinary Surgery (Surgery VI)	12
Syphilology (General Therapy X)	24
Clinical Practice (Fifty Treatments)	25
	385

Third Trimester

Gastro-Intestinal Diseases (General Therapy VI)	24
General Surgery (Surgery IV)	60
Nervous Diseases (General Therapy XIIa)	24
Obstetrical Surgery (Surgery V)	12
Anesthetics (Surgery XIII)	24
Oto-Rhino-Laryngology (Surgery XIV)	48
Neoplasms (Surgery XII)	12
Toxicology (Pharmacology III)	36
General Clinical Procedure (Miscellaneous)	12

Pediatrics (General Therapy XI)	48
Minor Surgery (Surgery X)	12
Metabolic Diseases (General Therapy VII)	24
Clinical Practice (Fifty Treatments)	25
Los Angeles Maternity Service (Obstetrics III)	25
Los Angeles Maternity Service (General Therapy XIb)	25
Los Angeles Maternity Service (Gynecology III)	25
	436

Senior Year

First Trimester

General Orthopedics (Surgery VIII)	24
Laboratory Surgery (Surgery VII)	24
X-Ray Diagnosis (Diagnosis IV)	12
Hydrotherapy (General Therapy XV)	12
Plastic Surgery (Surgery XI)	12
General Surgery (Surgery IVa)	36
Psychiatry (General Therapy XIII)	24
Special Orthopedics (Surgery VIIIa)	12
Dermatology (General Therapy VIII)	24
Pediatrics (General Therapy XIa)	48
Clinical Practice (One Hundred and Fifty Treatments)	75
Clinical Surgery (Surgery XVIa)	112
Los Angeles Maternity Service (Obstetrics III)	25
Los Angeles Maternity Service (General Therapy XIb)	25
Lecture Clinics	60
Eye, Ear, Nose and Throat Clinics (Surgery XIVa and XVa)	18
	568

Second Trimester

Laboratory Surgery (Surgery VIIa)	24
Hygiene (Pathology V)	60
Dietotherapy (General Therapy XIV)	36
Fractures and Dislocations (Surgery IX)	36
Electro Therapy (General Therapy XVI)	24
Clinical Practice (One Hundred and Fifty Treatments)	75
Clinical Surgery (Surgery XVIa)	112
Los Angeles Maternity Service (Obstetrics III)	25
Los Angeles Maternity Service (General Therapy XIb)	25
Los Angeles Maternity Service (Gynecology III)	25
Eye, Ear, Nose and Throat Clinics (Surgery XIVa and XVa)	18
Lecture Clinics	60
	520

Third Trimester

General Review	180
Clinical Practice (One Hundred and Fifty Treatments)	75
Los Angeles Maternity Service (Obstetrics III)	25
Los Angeles Maternity Service (General Therapy XIb)	25
Los Angeles Maternity Service (Gynecology III)	25
Lecture Clinics	60
Eye, Ear, Nose and Throat Clinics (Surgery XIVa and XVa)	18
Anesthetics (Surgery XIIIa)	8
Senior Qualifying Examinations	
	416
Grand Total	4834

APPENDIX C.

In Article 4503 of the Texas Civil Statutes, set out in full in Appendix A, and in the catalogues of the osteopathic colleges as listed in Appendix B, are shown the great variety of subjects which an osteopath must master to practice his profession. In view of the fact that in certain judicial circles in the past there has been a misconception of the osteopath and his training and aims, as evidenced by cases such as *Nelson* v. *Kentucky State Board of Health,* 57 S. W. 501, and *State* v. *McKnight,* 131 N. C. 717, 42 S. E. 580, wherein the osteopath was stated to be "on the plane of a trained nurse" it may not be out of order as a matter of information to quote the purpose of osteopathy as given in the catalogue of the College of Osteopathic Physicians and Surgeons of Los Angeles, 1925-26, page 12:

> "Osteopathy is founded upon these principles:
>
> The natural tendency of the human body in a normal environment, is to remain in a state of health; or, when forced into a state of disease, to spontaneously recover.
>
> The function of the physician in case of disease is to see to it that nothing interferes with the normal processes of recovery.
>
> The fundamental predisposing cause of disease in any organs or tissues is disturbance of their normal nutritive processes.
>
> A prominent cause of disturbed nutrition is anatomical malposition of the various parts of

the body or defect in their normal mechanical movements. These physical defects are very common in connection with the spinal column. They are frequently capable of correction by manual procedure and hence spinal adjustment and manipulation constitute the most important part of osteopathic methods.

A logical attitude of the physician in the presence of disease is one of confident hopefulness for a favorable outcome; and it is his duty to protect the patient from the depression of vitality that comes from fear.

Surgery is a branch of osteopathy; but osteopathic thinkers vigorously protest against the common tendency to hasty adoption of surgical measures without considering the ultimate, as well as the immediate, result of an operation which might be good as a temporary expedient.

In a surgeon or specialist mere technical skill at operation is but a dangerous substitute for a broad comprehension of the problem of disease and the body's processes of recovery therefrom. The specialist, to be a safe man, must have the latter first.

It is necessary for every osteopathic physician to understand to the fullest the physical laws underlying life's processes. The osteopath's work is a daily problem in applied anatomy, pathology, physiology, and psychology. Osteopathy calls for the most thorough training possible in all scientific fundamentals and how to apply them in managing disease."